

Exhibit A

STATE OF TEXAS §

COUNTY OF BRAZOS §

**24TH STREET TOWNHOMES
CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT**

This Agreement is by and between the City of Bryan, a Texas home-rule municipal corporation ("City"), and Etta Development, L.P. ("Developer") a Texas limited partnership.

WHEREAS, the City of Bryan, Texas ("City") is a home rule municipality which is duly incorporated and chartered under the constitution and laws of Texas; and

WHEREAS, the Texas Constitution prohibits any City, or other political subdivision, from lending its credit or granting public money to any individual, association or corporation whatsoever without a valid public purpose for doing so; and

WHEREAS, the Texas Constitution specifically states that economic development programs created pursuant to Chapter 380 of the Texas Local Government Code serve the public purpose of alleviating poverty, joblessness, economic blight, and provide other intangible benefits incidental to the development of the local economy; and

WHEREAS, on the 11th day of December, 2012, the City Council adopted a resolution creating a Chapter 380 Program to encourage the development of the property at the intersection of 24th Street and Houston Avenue ("Property"); and

WHEREAS, the City and the community at large have gone through numerous efforts to restore Downtown Bryan in order to increase retail and commercial activity, add property value to enhance tax revenue, and to improve the overall atmosphere of the City; and

WHEREAS, Developer acquired property at the intersection of 24th Street and Houston Avenue is under-developed and in need of new construction to provide more population density in proximity to downtown Bryan; and

WHEREAS, Developer's proposed plans for the property at the intersection of 24th Street and Houston Avenue will remove urban blight and provide infill development that accomplishes the City's goals for downtown Bryan as per its comprehensive plans; and

WHEREAS, the City Council determines that this Agreement will encourage similar infill development and removal of urban blight, thus raising property values and increasing the customer base for downtown stores and restaurants; and

THEREFORE THE PARTIES AGREE AS FOLLOWS:

A. Project

1. The project Developer intends to undertake is to construct five (5) townhomes on the lot at the southeast corner of 24th Street and Houston Avenue. The project will increase the value of the property as appraised by the Brazos County Appraisal District ("BCAD"), in their sole discretion, by at least \$850,000.00. The project will be completed, meaning that a certificate of occupancy has been issued for each of the five (5) townhomes, within thirty (30) months of the execution of this Agreement.
2. Developer agrees to comply with all City ordinances regarding construction and building standards, and will complete the process of obtaining permits, requesting inspections, and obtaining certificates of occupancy.

B. Incentive

3. The City agrees to waive fees for building, electrical, plumbing, and mechanical permits for the project, provided that the combined value of all fees waived shall not exceed \$4,500.00.
4. In the event that Developer fails to meet its obligations to complete the project within thirty (30) months or increase the BCAD appraised value by the required amount, the Developer shall be in breach of this Agreement and the City shall be entitled to recapture the value of the waived fees.

C. Miscellaneous

5. **Severability:** If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the Parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible.
6. **Governing Law, Jurisdiction & Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, as it applies to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The parties acknowledge that this Agreement is performable in Brazos County, Texas and hereby submit to the jurisdiction of the courts of that County, and hereby agree that any such Court shall be a proper forum for the determination of any dispute arising hereunder.
7. **Assignment:** Developer shall not assign this Agreement without the prior written approval of the City Council. This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns.
8. **Default:** If either Party defaults in its obligations under this Agreement, the other Party must, prior to exercising a remedy available to that Party due to the default, give written notice to the defaulting Party, specifying the nature of the alleged default and the manner in which it can be satisfactorily cured, and extend to the defaulting Party at least thirty (30) days from receipt of the notice to cure the default. If the nature of the default is such that it cannot reasonably be cured within the thirty (30) day period, the commencement of the cure within the thirty (30) day period and the diligent prosecution of the cure to completion will be deemed a cure within the cure period. The City may issue Stop Work Orders for violations arising under this Agreement or the

regulations applied herein. Time is of the essence of this Agreement and failure to strictly abide by deadlines contained herein constitutes a breach.

9. **Remedies for Default:** If either Party defaults under this Agreement and fails to cure the default within the applicable cure period, the non-defaulting Party will have all rights and remedies available under this Agreement or applicable law, including the right to institute legal action to cure any default, to enjoin any threatened or attempted violation of this Agreement or to enforce the defaulting Party's obligations under this Agreement by specific performance or writ of mandamus, or to terminate this Agreement. All remedies available to a Party will be cumulative and the pursuit of one remedy will not constitute an election of remedies or a waiver of the right to pursue any other available remedy.
10. **Reservation of Rights:** To the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.
11. **Attorneys Fees:** The prevailing Party in any dispute under this Agreement will be entitled to recover from the non-prevailing Party its reasonable attorney's fees, expenses and court costs in connection with any original action, any appeals, and any post-judgment proceedings to collect or enforce a judgment.
12. **Waiver:** Any failure by a Party to insist upon strict performance by the other Party of any provision of this Agreement will not, regardless of the length of time during which that failure continues, be deemed a waiver of that Party's right insist upon strict compliance with all terms of this Agreement. In order to be effective as to a Party, any waiver of default under this Agreement must be in writing, and a written waiver will only be effective as to the specific default and as to the specific period of time set forth in the written waiver. A written waiver will not constitute a waiver of any subsequent default, or of the right to require performance of the same or any other provision of this Agreement in the future.
13. **Entire Agreement:** This Agreement contains the entire agreement of the Parties, and there are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement may be amended only by written agreement signed by the Parties.
14. **Exhibits, Headings, Construction & Counterparts:** All exhibits attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. Wherever appropriate, words of the masculine gender may include the feminine or neuter, and the singular may include the plural, and *vice-versa*. Each of the Parties has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not be employed in interpreting this Agreement or its exhibits. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts, individually or taken together, bear the signatures of all of the Parties.
15. **Authority for Execution:** The City certifies, represents, and warrants that the execution of this Agreement has been duly authorized and that this Agreement has been approved in conformity with City ordinances and other applicable legal requirements. Developer certifies, represents, and warrants that the execution of this Agreement is duly authorized in conformity with its authority.

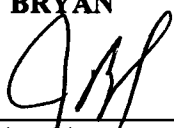
16. **Notices:** Any notices or approvals under this Agreement must be in writing may be sent by hand delivery, facsimile (with confirmation of delivery) or certified mail, return receipt requested, to the Parties at the following addresses or as such addresses may be changed from time to time by written notice to the other Parties:

CITY: City of Bryan
Attn: City Manager
P.O. Box 1000
Bryan, Texas 77805

DEVELOPER: Etta Development, L.P.
Attn: Chris Lawrence
712 Banks Ave.
Bryan, Texas 77803

Either City or Developer may change its mailing address at any time by giving written notice of such change to the other in the manner provided herein at least ten (10) calendar days prior to the date such change is effected. All notices under this Agreement will be deemed given on the earlier of the date personal delivery is effected or on the delivery date or attempted delivery date shown on the return receipt or facsimile confirmation.

CITY OF BRYAN



Jason P. Bienski, Mayor

Date: 12-13-12

Attest:




Mary Lynne Stratta, City Secretary

Approved as to form



Janis K. Hampton, City Attorney

ETTA DEVELOPMENT, L.P.



Chris Lawrence, President of BCS Modern Living, LLC, General Partner

Date: 12/3/2012

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS, CREATING 24TH STREET TOWNHOMES ECONOMIC DEVELOPMENT PROGRAM PURSUANT TO CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE; AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WAIVING PERMIT FEES IN ACCORDANCE WITH THE PROGRAM; PROVIDING AN EFFECTIVE DATE AND COMPLIANCE WITH THE TEXAS OPEN MEETINGS ACT.

WHEREAS, the City of Bryan, Texas ("City") is a home rule municipality which is duly incorporated and chartered under the constitution and laws of Texas; and

WHEREAS, the Texas Constitution prohibits any City, or other political subdivision, from lending its credit or granting public money to any individual, association or corporation whatsoever without a valid public purpose for doing so; and

WHEREAS, the Texas Constitution specifically states that economic development programs created pursuant to Chapter 380 of the Texas Local Government Code serve the public purpose of alleviating poverty, joblessness, economic blight, and provide other intangible benefits incidental to the development of the local economy; and

WHEREAS, the City and the community at large have gone through numerous efforts to restore Downtown Bryan in order to increase retail and commercial activity, add property value to enhance tax revenue, and to improve the overall atmosphere of the City; and

WHEREAS, the property at the southeast corner of the intersection of 24th Street and Houston Avenue is under-developed and in need of new construction to provide more population density in proximity to downtown Bryan; and

WHEREAS, the development of the property at the southeast corner of the intersection of 24th Street and Houston Avenue will remove urban blight and provide infill development that accomplishes the City's goals for downtown Bryan as per its comprehensive plans; and

WHEREAS, the City Council determines that this program will encourage similar infill development and removal of urban blight, thus raising property values and increasing the customer base for downtown stores and restaurants; and

WHEREAS, the City Council determines that it is in the best interests of the City to execute the agreement, attached to this Resolution as **Exhibit A**, in furtherance of the goals and intentions of the program.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS:

1.

That the facts and recitations contained in the preamble of this Resolution are hereby found and declared to be true and correct.

2.

The City hereby creates the 24th Street Townhomes Economic Development Program to provide incentives to redevelop the Property in a manner consistent with the City's plans and goals.

3.

The Mayor is authorized to enter into the agreement, which is attached to this Resolution as Exhibit A, under Chapter 380 of the Texas Local Government Code, agreeing to waive a portion of the development related fees that would otherwise be incurred as a result of this construction project.

4.

This resolution shall be effective immediately upon its passage and adoption, but shall in no way effect the validity of prior acts or agreements of the City.

5.

This document was passed and approved at a public meeting in compliance with the Texas Open Meetings Act.

APPROVED AND ADOPTED at a regular meeting on this 11th day of December, 2012.

CITY OF BRYAN

Jason P. Bienski, Mayor

ATTEST

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

RESOLUTION NO. 3464

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CITY OF BRYAN



Jason F. Bienski, Mayor

ATTEST



Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:



Janis K. Hampton, City Attorney